IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR
J U D G M E N T

S.B. Civil Second Appeal No.174 of 2006.

Nathu Lal Versus Dargah Committee, Ajmer

Date of Order ::: 10.07.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. Ashok Kumar Shahdadpuri, for defendant-appellant.
Mr. J.C. Jain, for plaintiff-respondent

By the Court :

Heard learned counsel for the parties.

The substantial question of law involved in the present case is “whether, the learned First Appellate Court is required to appreciate the facts and law involved in the Regular First Appeal or not ?”

The plaintiff-respondent instituted a suit for recovery of arrears of rent as well as ejectment from the rented premises against the defendant-appellant.

The provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 are not applicable, on the properties owned by Dargah Committee, therefore, the suit

was filed after service of notice on the defendant terminating his tenancy, as per the provisions of Transfer of Property Act.

Learned Lower Court decreed the suit and passed a decree of ejectment against defendant. Being aggrieved with the same a Regular First Appeal under Section 96 of the C.P.C. was preferred before the District & Sessions Judge, which was transferred for disposal to the Court of Additional District & Sessions Judge No.3, Ajmer.

Learned counsel for the defendant-appellant contended that the impugned judgment dated 04.02.2006 passed by the First Appellate Court reveals that neither the facts have been referred nor the law involved in the present case were referred and considered, whereas it was a duty of the First Appellate Court to consider and appreciate the facts as well as law both while deciding the Regular First Appeal. He further contended that the impugned judgment passed by the First Appellate Court is not a well reasoned and speaking order, therefore, the same is liable to be set aside by this Court.

Learned counsel for the plaintiff-respondent Mr. J.C. Jain fairly and rightly contended that judgment of first appeal should be speaking and well reasoned. However he contended that instead of admitting the appeal, this

Court may remand the matter back at this stage itself to the First Appellate Court for fresh decision after considering and appreciating the facts and law involved in the present case.

After considering the submissions of learned counsel for both the parties, I am of the opinion that appeal under Section 96 C.P.C., is a statutory appeal and it is a duty of the first appellate Court to refer, consider and appreciate the facts as well as law both while deciding the first appeal, therefore, above referred question involved in this second appeal is liable to be answered in favour of appellant.

Consequently I allow this second appeal and set aside the impugned judgment dated 04.02.2006 passed by the Additional District & Sessions Judge No.3, Ajmer in Regular Appeal No.47 of 2004 and remit the matter back to the First Appellate Court i.e. the Additional District & Sessions Judge No.3 Ajmer with a direction to rehear the appeal again and decide the same afresh in accordance with law and as per observation given above.

The parties are directed to appear before the Additional District & Sessions Judge No.3, Ajmer on 21.08.2006.

The Registry is directed to send back the record of both the Courts below immediately.

The First Appellate Court will try to dispose of the appeal within a period of four months from the date of receipt of the record.

There will be no order as to costs.

(Narendra Kumar Jain) J.

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